IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.270 OF 2006

Pratibhanagar Coop. Housing Society Ltd. .. Petitioner
Versus
Uday Bhaskarrao Suryavanshi .. Respondent

Mr.A.A.Kumbhakoni, i/b. Amit Borkar for petitioner
Mr.C.J.Sawant, Senior Advocate with S.V.Sadavarte for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 7th February 2006.

P.C.

. Heard Mr.Kumbhakoni for petitioner and Mr.Sawant, learned Senior Counsel for respondent.

2. By this petition under Article 227 of the Constitution of India, the order passed by the Maharashtra State Coop.Appellate Court, Mumbai Bench Pune in Appeal No.227 of 2005 has been

challenged by a Cooperative Housing Society.

3. The order under challenge delivered on 9th January 2006 allows abovementioned appeal which is preferred by the respondent. The result is that the order of the trial court dated 3rd December 2005 granting temporary injunction in favour of the petitioner society stands vacated.

4. The trial court had by an order and injunction restrained respondent from erecting disputed antenna (GSM Tower) and control cabin on a building constructed on Plot No.67 till final decision of the dispute which was filed by petitioner society being C.C.S.No.1172/05.

5. Mr.Kumbhakoni, learned Counsel for petitioner submits that the order passed by the lower appellate court virtually non suits the petitioner society and now nothing remains to be decided in the dispute once the respondent is

permitted to erect the tower and utilise it.

6. In my view, the order passed at an interlocutory stage by the lower appellate court would not take away the right of petitioner society to urge before the trial court that the said antenna should be dismantled nor does it prevent the trial court from passing such orders and directions.

7. The order of the lower appellate court is delivered at the stage of considering an application for interim injunction and based upon materials produced at that stage. The order of the trial court has been reversed by the lower appellate court. Observations in the said order would not influence trial court while deciding the dispute on its own merits and in accordance with law.

8. In addition, Mr.Sawant upon taking

instructions from respondent who is present in court, states that respondent would file undertaking in trial court within two weeks from today incorporating a specific statement that respondent would dismantle the antenna in question in case the trial court directs in the final order to do so and at his own cost, subject of course to such rights as are available in law. The statement of learned Senior Counsel is accepted. However, the undertaking to be filed in Trial Court.

9. Such undertaking being filed within the time stipulated above the trial court to take it on record. The trial court to decide the dispute uninfluenced by the observations of the lower appellate court as expeditiously as possible and in any event within six months from today. Trial court shall accept the said undertaking on affidavit to be filed by the respondent. Petition disposed of accordingly.

(S.C.DHARMADHIKARI, J)